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Attorney for the Plaintiff
HERMAN MENEZES, LLC

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

* * *

IN RE:

ALVIN A. BRESCIANI,

Debtor.

HERMAN MENEZES, LLC

Plaintiff,

Vs.

ALVIN BRESCIANI,

Defendant.

Case No. 3:22-bk-50266

Adv. Case No: 22-05012-hib

Chapter 7

Hearing Date: June 21, 2023

Hearing Time: 9:30 AM

**REPLY TO RESPONSE TO
SECOND MOTION FOR
DEFAULT JUDGMENT
UNDER FED. R. BANKR. P.
7055**

TO THE COURT AND ALL PARTIES IN INTEREST:

COMES NOW, HERMAN MENEZES, LLC, by and through the undersigned counsel, and hereby files the following Reply to the June 7, 2023 Response to Plaintiff's Second Motion for Default Judgment against Defendant ALVIN BRESCIANI, under Fed. R. Bankr. P. 7055.

This Reply is made and based upon all the pleadings and records on file for this proceeding together with every exhibit that is mentioned herein or attached hereto (each of which is incorporated by this reference as though it were set forth herein *haec verba*), if any there be, as well as the points and authorities set forth directly hereinafter.

MEMORANDUM OF POINTS AND AUTHORITIES

The procedural history of this case makes plain that Defendant has failed to plead or otherwise defend this case. The Clerk of the Court has entered two defaults against the Defendant (ECF #12 and ECF #33).

After the Court set aside Defendant's first default, the Court issued an Order Setting Aside Default (ECF #30) in which the Court directed Defendant to file an answer to the Amended Complaint by Monday, March 13, 2023. Before issuing this Order, at the February 9, 2023 hearing on Plaintiff's first Motion for Default Judgment, the Court expressly admonished Defendant that the Court would enter default judgment if he failed to respond to the Amended Complaint. Yet again, the Defendant did not do so. In fact, Defendant has not to date filed an answer, despite the Court's clear order. Nor has Defendant filed a motion to set aside the second default entered by the Clerk of the Court.

Instead, Defendant has filed a response to Plaintiff's Second Motion for entry of Default Judgment in which Defendant argues an issue related to claim preclusion. Defendant's "response" is nothing of the sort, as it does not explain or attempt to explain why Defendant, for many months, failed to plead or otherwise respond to Plaintiff's Amended Complaint as required by the rules as

1 well as an express order from the Court, despite two defaults. Further, the claim
2 preclusion argument presented by Defendant is meritless and gets the issue
3 related to claim preclusion completely backward.

4 The order from the case attached to Defendants Response, *Stratford v.*
5 *Fontanez*, Case No. 20-13764 from the Northern District of Ohio involved a
6 **creditor's** motion for judgment on the pleadings under FRCP 12(c). The creditor
7 contended that she was entitled to a determination of nondischargeability based
8 on the issue-preclusive effect of a default judgment entered **against the debtor**
9 in state court. The Court determined that because the state court judgment did
10 not address the merits of the claims at issue, it could not enter judgment on the
11 pleadings in favor of the creditor on that basis.

12 The *Stratford v. Fontanez* case in no way stands for the proposition that a
13 debtor may seek to dismiss a creditor's adversary proceeding because an
14 underlying state court judgment sought to be given preclusive effect. This
15 interpretation sought by the defendants is an absurd result because it would
16 allow any debtor to seek discharge of a fraudulent debt by simply not responding
17 to pleadings in state court.

18 Further, the underlying Motion by the Plaintiff seeks judgment by default
19 because the defendant simply failed to respond - issue preclusion is not raised.
20 Because Plaintiff has never requested the court grant the underlying state court
21 judgment preclusive effect, Defendant's discussion of issue preclusion standards
22 in Nevada in *In Re Sandoval*, 126 Nev. 136, 139 (2010) is entirely irrelevant to
23 Plaintiff's Second Motion for Default Judgment.

24 WHEREFORE, PLAINTIFF HEREBY MOVES: in accordance with Fed. R.
25 Civ. P. 55(b)(2); Fed. R. Bankr. P. 7055. for default judgment against the
26 Defendant and an order declaring that the \$330,570.65 in damages plus
27
28

1 prejudgment and post-judgment interest in the amount of 6.75% owed to
2 HERMAN MENEZES, LLC is non-dischargeable under the provisions of 11
3 U.S.C. § 523.

4
5 **DATED** this Jun 13, 2023

6 By: /s/ Luke Busby, Esq.
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CERTIFICATE OF SERVICE

I certify that on the date shown below, I caused service to be completed of a true and correct copy of the foregoing **REPLY TO RESPONSE TO SECOND MOTION FOR DEFAULT JUDGMENT UNDER FED. R. BANKR. P. 7055** by:

_____ personally delivering;
_____ delivery via Reno/Carson Messenger Service;
_____ sending via Federal Express (or other overnight delivery service);
_____ depositing for mailing in the U.S. mail, with sufficient postage affixed thereto;
or,
 x delivery via electronic means (fax, eflex, NEF, etc.) to:

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Attorney for Alvin A. Bresciani

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Jun 13, 2023